



General Assembly

January Session, 2019

## ***Amendment***

LCO No. 9542



Offered by:

SEN. LOONEY, 11<sup>th</sup> Dist.

SEN. WINFIELD, 10<sup>th</sup> Dist.

To: Subst. Senate Bill No. 761

File No. 857

Cal. No. 453

**"AN ACT PROMOTING THE USE OF HONEST  
RECOMMENDATIONS BETWEEN EMPLOYERS AND  
PROHIBITING AN EMPLOYER'S USE OF A NONDISCLOSURE  
AGREEMENT RELATING TO ACTS OF DISCRIMINATION  
OCCURRING IN THE EMPLOYER'S WORKPLACE."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2019*) (a) As used in this  
4 section:

5 (1) "Employee" means any person engaged in service to an employer  
6 in a business of his or her employer;

7 (2) "Employer" means a person engaged in business who has  
8 employees, including the state and any political subdivision of the  
9 state;

10 (3) "Occurring in the workplace" includes attendance at an off-

11 premises work-related event that is coordinated by or through the  
12 employer, between employees or between an employer and an  
13 employee;

14 (4) "Sexual assault" means any act that would constitute a violation  
15 of section 53a-70, 53a-70a, 53a-70b, 53a-70c, 53a-71, 53a-72a, 53a-72b or  
16 53a-73a of the general statutes; and

17 (5) "Sexual harassment" has the same meaning as provided in  
18 subdivision (8) of subsection (b) of section 46a-60 of the general  
19 statutes, and includes any act constituting sexual harassment under 29  
20 CFR 1604.11(a).

21 (b) Notwithstanding the provisions of section 31-128f of the general  
22 statutes, if an employer knows that a person is evaluating the  
23 candidacy of a current or former employee of the employer, and the  
24 employer provides such person with a recommendation or positive  
25 commentary relating to the current or former employee's work  
26 performance, such employer has a duty to timely disclose to such  
27 person any known act of sexual harassment or sexual assault  
28 committed by the employee occurring in the workplace of the  
29 employer. For purposes of this section, an employer knows about an  
30 act of sexual assault when the individual who provides the  
31 recommendation or positive commentary is an employee or agent of  
32 the employer and has actual knowledge of such act. For purposes of  
33 this section, an employer knows about an act of sexual harassment  
34 when the individual who provides the recommendation or positive  
35 commentary is the employer, or an employee or agent of the employer  
36 and has actual knowledge of such act, and a complaint alleging the  
37 sexual harassment was filed with the Commission on Human Rights  
38 and Opportunities, the Equal Employment Opportunity Commission  
39 or a court of competent jurisdiction. An employer's duty to timely  
40 disclose any known act of sexual harassment or sexual assault shall  
41 terminate one year following the date on which the employer, or an  
42 employee or agent of the employer has actual knowledge of an act of  
43 sexual harassment or sexual assault committed by an employee.

44 Notwithstanding the provisions of this subsection, a former employer's  
45 duty to timely disclose known acts of sexual harassment or sexual  
46 assault under this subsection shall terminate prior to the expiration of  
47 such one-year period, if during such period: (1) a criminal prosecution  
48 involving the sexual assault (A) is dismissed, (B) results in the entry of  
49 a nolle prosequi of the sexual assault charges, or (C) results in the  
50 acquittal of the former employee; or (2) in a proceeding before the  
51 Commission on Human Rights and Opportunities involving a  
52 complaint of sexual harassment, (A) the complainant withdraws the  
53 complaint, or (B) said commission enters a finding that there is no  
54 reasonable cause for the complaint.

55 (c) If an employer owes a duty to disclose to a person who is  
56 evaluating the candidacy of a current or former employee of the  
57 employer under subsection (b) of this section, and such person hires  
58 the current or former employee in reliance on the recommendation or  
59 positive commentary, then for such time that the former employee is  
60 employed by the person, the former employer shall be liable to any  
61 employee of the person who relied on such recommendation or  
62 positive commentary for the following acts committed by the former  
63 employee occurring in the workplace of the person, (1) any act of  
64 sexual harassment committed by the former employee, if the former  
65 employer breached its duty to disclose sexual harassment, and (2) any  
66 act of sexual harassment and sexual assault committed by the former  
67 employee, if the former employer breached its duty to disclose sexual  
68 assault.

69 Sec. 2. (NEW) (*Effective October 1, 2019*) (a) As used in this section:  
70 (1) "Employee" means any person engaged in service to an employer in  
71 a business of his or her employer; and (2) "employer" means a person  
72 engaged in business who has employees, including the state and any  
73 political subdivision of the state.

74 (b) No employer shall enter into or negotiate a contract with an  
75 employee or prospective employee, that as a condition of employment,  
76 continued employment, promotion, compensation for employment

77 services or employment benefits, contains a nondisclosure clause,  
78 nondisparagement clause, waiver or other provision that has the  
79 purpose or effect of preventing the employee from disclosing or  
80 discussing discrimination, including harassment, occurring in the  
81 employer's workplace or at an off-premises work-related event that is  
82 coordinated by or through the employer, between employees, or  
83 between an employer and an employee. Nothing in this section shall  
84 prohibit an agreement containing a nondisclosure clause that settles a  
85 claim for discrimination, provided such settlement agreement is not a  
86 condition of the employee's continued employment of the employer.  
87 The Labor Department may impose a civil penalty, not exceeding five  
88 hundred dollars, for each violation of this subsection.

89 (c) An action to redress a violation of subsection (b) of this section  
90 may be maintained in any court of competent jurisdiction by any one  
91 or more employees or prospective employees. An employer who  
92 violates subsection (b) of this section may be found liable for  
93 compensatory damages, attorney's fees and costs, punitive damages  
94 and such legal and equitable relief as the court deems just and proper."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	New section
Sec. 2	<i>October 1, 2019</i>	New section